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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 447

WEST TOWNS BUS COMPANY, a corporation of Illinois,
Appellant,

vs.

MARGARET B. LAU,
Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT.

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The Scheffer Press, Inc.—ANdover 3-6850

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1. The holding of the state court that after a reorganization plan has been approved and Consummation Order entered on the basis of existing claims against the trustee including a state court suit with a named ad damnum, nevertheless, under the provisions of the state practice act, the state court has power thereafter to allow the ad damnum to be increased, would make such provision of the state practice act invalid because repugnant to the Bankruptcy Act 11

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2. The holding of the state court that the state two-year limitation statute should not be applied here because of an amendment to the state practice act adopted after the Consummation Order—would make such amendment invalid as repugnant to the Bankruptcy Act 16

3. The holding of the state court that the transfer of the mortgaged bus line assets by the reorganization trustee to the reorganized debtor, appellant here, ipso facto made appellant liable for negligence claims of non-employees against trustee, is repugnant to the Bankruptcy Act, and the rights, titles, privileges and immunities thereunder 18

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OCTOBER TERM, 1959.

No.

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vs.

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Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT.

(a) *The official report of the opinion of the state supreme court is:* 16 Ill. 2d 442; a copy of said opinion is attached hereto, marked **Appendix A.**

(b) *Statement of the grounds on which the jurisdiction of this court is invoked:*

(i) This was a state court action at law by appellee against appellant, a reorganized bankruptcy debtor, for damages for personal injuries allegedly sustained by appellee, as passenger, from the negligent operation of a motor bus by the bankruptcy trustee. Appellee recovered verdict and judgment for Seventy-Five Thousand Dollars; on appellant's appeal to the state

supreme court, the judgment was affirmed. The affirmance was on the basis of certain provisions of the state civil practice act which were held by the state court to authorize (a) an increase in the *ad damnum* in the state court suit and (b) a substitution of appellant as defendant, *both three and one-half* years after the bankruptcy Consummation Order (the applicable state limitation statute being 2 years), contrary to appellant's contention that such a construction or application of these state practice act provisions would make them invalid as repugnant to the U. S. Bankruptcy Act and the U. S. Constitution.

(ii) The date of the judgment of the supreme court of Illinois sought to be reviewed and the time of its entry are: March 20, 1959. The date of the order denying appellant's petition for rehearing is May 19, 1959. The Amended Notice of Appeal was filed on August 11, 1959 in the supreme court of Illinois.

(iii) The statute believed to confer jurisdiction on this court: U.S.C. Title 28, Section 1257(2).

(iv) Cases believed to sustain the jurisdiction:

Fiske v. *Kansas*, 274 U.S. 380, 385-386.

New York ex rel. Bryant v. *Zimmerman*, 278 U.S. 63, 66-67.

Standard Oil Company v. *Johnson*, 316 U.S. 481, 482-483.

(v) Validity of the following statutes of the State of Illinois is involved:

Ill. Rev. Stat. 1957, Vol. 2:
(p. 990) Ch. 110, sec. 34
(p. 992) Ch. 110, sec. 46
(p. 994) Ch. 110, sec. 54

The pertinent text thereof is set out in **Appendix C** hereto.

(c) *The questions presented by the appeal.*

In view of the applicable Illinois limitation statute of two years for claims for personal injuries (Ill. Rev. Stat. 1957, Ch. 83, sec. 15), are the specified Illinois practice act sections, as construed and applied by the state court, invalid on the ground of being repugnant to the constitution and laws of the United States, particularly the National Bankruptcy Act:

(i) In allowing an increase of the original *ad damnum* three and one-half years after the entry of the bankruptcy court Consummation Order?

(ii) In allowing appellant to be made defendant three and one-half years after such Consummation Order?

(iii) In imposing liability on appellant for a non-employee negligence claim against the bankruptcy trustee, absent any showing that the trustee had been authorized to incur or pay such claim or that appellant, under the Consummation Order, succeeded to trustee's liability?

(d) *Statement of the case.*

1. Debtor, an intra-state public utility engaged in the transportation of passengers for hire, was in reorganization in the U. S. district court under Chapter X of the Bankruptcy Act for seven years from July 1, 1947 to July 1, 1954. During the reorganization proceeding, appellee Lau on March 6, 1953 filed suit in the state court against the reorganization trustee for personal injuries claimed to have been suffered by her because of the trustee's alleged negligence on May 10, 1952 in operating a bus on which she was a passenger; one Hathaway, as operator of a colliding vehicle was made co-defendant.